

AMENDED IN SENATE APRIL 16, 2015

SENATE BILL

No. 368

Introduced by Senator Berryhill

February 24, 2015

An act to amend Section 510 ~~of~~ *of, and to add Section 511.5 to*, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 368, as amended, Berryhill. Employment: work hours.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would enact the California Workplace Flexibility Act of 2015. The bill would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow the employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday. The bill would prescribe a method for calculating the payment of overtime for hours worked in excess of the permitted amounts and would establish requirements for termination of these agreements. The bill would except from its provisions employees covered by collective bargaining and public employees, as specified. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.

~~Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *California Workplace Flexibility Act of 2015.*

3 *SEC. 2. The Legislature finds and declares all of the following:*

4 *(a) California businesses and their workers suffer from outdated*
5 *and inefficient workplace and overtime rules that do not allow for*
6 *sufficient flexibility for employers and workers to schedule their*
7 *hours of work for mutual benefit.*

8 *(b) California overtime laws, which are unique in the country,*
9 *make it difficult for most employers to reach an agreement with*
10 *an individual worker that would allow a flexible work schedule.*

11 *(c) Existing law does not permit a California employer to allow*
12 *an individual worker to choose a flexible work schedule of four*
13 *10-hour days per week without overtime being paid.*

14 *(d) As a consequence, large, small, and micro-employers do*
15 *not have the flexibility to offer their employees the opportunity to*
16 *take advantage of a flexible work schedule that would benefit the*
17 *workers and their families.*

18 *(e) Permitting employees to elect to work four 10-hour days per*
19 *week without the payment of overtime would allow those employees*
20 *to spend much-needed time with their families, lessen traffic*
21 *congestion on our crowded roads and highways, allow workers*
22 *to spend one day a week on personal matters, such as volunteering*
23 *at a child's school, scheduling medical appointments, and attending*
24 *to other important family matters that often are difficult to schedule*
25 *with a five-days-per-week, eight-hours-per-day schedule.*

26 *(f) It is the intent of the Legislature in enacting the California*
27 *Workplace Flexibility Act of 2015 to protect workers as follows:*

28 *(1) An employee may not be forced to work more than eight*
29 *hours in a day without receiving overtime, but, instead, he or she*
30 *may request a flexible work schedule of up to four 10-hour days*
31 *per week and the employer may agree to this schedule without*

1 *having to pay overtime for the ninth and 10th hours worked per*
2 *day in that schedule.*

3 *(2) The employer will be required to pay overtime rates after*
4 *10 work hours in a day for workers who have chosen a flexible*
5 *schedule pursuant to this act.*

6 *(3) The employer will be required to pay double normal pay*
7 *after 12 work hours in a day for a worker who has chosen a flexible*
8 *schedule under this act.*

9 *(4) The worker, including one who chooses a flexible schedule*
10 *under this act, will receive overtime for any hours worked over 40*
11 *hours in a single week.*

12 *(g) Workplaces that are unionized already allow workers to*
13 *choose to work four 10-hour days; however, it is virtually*
14 *impossible for workers of nonunionized workplaces to enjoy this*
15 *benefit.*

16 *SEC. 3. Section 510 of the Labor Code is amended to read:*

17 *510. (a) Eight hours of labor constitutes a day's work. Any*
18 *work in excess of eight hours in one workday and any work in*
19 *excess of 40 hours in any one workweek and the first eight hours*
20 *worked on the seventh day of work in any one workweek shall be*
21 *compensated at the rate of no less than one and one-half times the*
22 *regular rate of pay for an employee. Any work in excess of 12*
23 *hours in one day shall be compensated at the rate of no less than*
24 *twice the regular rate of pay for an employee. In addition, any*
25 *work in excess of eight hours on any seventh day of a workweek*
26 *shall be compensated at the rate of no less than twice the regular*
27 *rate of pay of an employee. Nothing in this section requires an*
28 *employer to combine more than one rate of overtime compensation*
29 *in order to calculate the amount to be paid to an employee for any*
30 *hour of overtime work. The requirements of this section do not*
31 *apply to the payment of overtime compensation to an employee*
32 *working pursuant to any of the following:*

33 *(1) An alternative workweek schedule adopted pursuant to*
34 *Section 511.*

35 *(2) An employee-selected flexible work schedule adopted*
36 *pursuant to Section 511.5.*

37 ~~*(2)*~~

38 *(3) An alternative workweek schedule adopted pursuant to a*
39 *collective bargaining agreement pursuant to Section 514.*

40 ~~*(3)*~~

(4) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

SEC. 4. Section 511.5 is added to the Labor Code, to read:

511.5. (a) Notwithstanding Section 511 or any other law or order of the Industrial Welfare Commission, an individual nonexempt employee may work up to 10 hours per workday without any obligation on the part of the employer to pay an overtime rate of compensation, except as provided in subdivision (b), if the employee requests this schedule in writing and the employer approves the request. This shall be referred to as an overtime exemption for an employee-selected flexible work schedule.

(b) If an employee-selected flexible work schedule is adopted pursuant to subdivision (a), the employer shall pay overtime at one and one-half times the employee's regular rate of pay for all hours worked over 40 hours in a workweek or over 10 hours in a workday, whichever is the greater number of hours. All work performed in excess of 12 hours per workday and in excess of eight hours on a fifth, sixth, or seventh day in the workweek shall be paid at double the employee's regular rate of pay.

(c) The employer may inform its employees that it is willing to consider an employee request to work an employee-selected flexible work schedule, but shall not induce a request by promising an employment benefit or threatening an employment detriment.

(d) The employee or employer may discontinue the employee-selected flexible work schedule at any time by giving written notice to the other party. The request will be effective the first day of the next pay period or the fifth day after notice is given if there are fewer than five days before the start of the next pay period, unless otherwise agreed to by the employer and the employee.

(e) This section does not apply to any employee covered by a valid collective bargaining agreement or employed by the state,

1 a city, county, city and county, district, municipality, or other
2 public, quasi-public, or municipal corporation, or any political
3 subdivision of this state.

4 (f) This section shall be liberally construed to accomplish its
5 purposes.

6 (g) (1) The Division of Labor Standards Enforcement shall
7 enforce this section and shall adopt or revise regulations in a
8 manner necessary to conform and implement this section.

9 (2) This section shall prevail over any inconsistent provisions
10 in any wage order of the Industrial Welfare Commission.

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12 ~~read:~~

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15 ~~excess of 40 hours in any one workweek and the first eight hours~~
16 ~~worked on the seventh day of work in any one workweek shall be~~
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21 ~~work in excess of eight hours on any seventh day of a workweek~~
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23 ~~rate of pay of an employee. Nothing in this section requires an~~
24 ~~employer to combine more than one rate of overtime compensation~~
25 ~~in order to calculate the amount to be paid to an employee for any~~
26 ~~hour of overtime work. This section does not apply to the payment~~
27 ~~of overtime compensation to an employee working pursuant to~~
28 ~~any of the following:~~

29 ~~(1) An alternative workweek schedule adopted pursuant to~~
30 ~~Section 511.~~

31 ~~(2) An alternative workweek schedule adopted pursuant to a~~
32 ~~collective bargaining agreement pursuant to Section 514.~~

33 ~~(3) An alternative workweek schedule to which this chapter is~~
34 ~~inapplicable pursuant to Section 554.~~

35 ~~(b) Time spent commuting to and from the first place at which~~
36 ~~an employee's presence is required by the employer shall not be~~
37 ~~considered to be a part of a day's work, when the employee~~
38 ~~commutes in a vehicle that is owned, leased, or subsidized by the~~
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